

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**DAVID WAYNE MCWHERTER, TDCJ
#00267382,**

Plaintiff,

v.

LORIE DAVIS, ET AL.,

Defendants.

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CASE NO. 6:19-CV-383-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On August 5, 2020, the Magistrate Judge issued a Report and Recommendation (Doc. No. 35), recommending that Plaintiff's civil rights complaints be dismissed with prejudice for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(c).

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they


are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. The Court therefore adopts the Report and Recommendation of the United States Magistrate Judge (Doc. No. 35) as the findings of this Court.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report (Doc. No. 35) is **ADOPTED**. It is further

ORDERED that Plaintiff's suit is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(c).

So **ORDERED** and **SIGNED** this **21st** day of **September, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE